**Court No.2**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**A.O. No. 108 of 2003**

National Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office 5/222, Canal Road,
Tikonia, Haldwani, District-Nainital.

..... Opp.party/Appellant

**Versus**

(1)Smt. Bashakhi Devi W/o late Sri Bikram Singh,
(2)Sri Bhagat Sigh S/o late Sri Gyan Singh,
(3)Smt. Parwati Devi W/o Sri Bhagat Singh,
All residents of Village-Kimoli, Patti circle
Kankhal, Tehsil-Karnprayag, District-Chamoli.

..... Claimant/Respondents

(4)Sri Sumer Singh S/o Sri Prem Singh,
R/o Village-Bacheti Khal, Police Station
Devprayag, District Chamoli,
(5)Sri Mithilesh Dhyani S/o Sri Manohar Kant Dhyani,
R/o 157- Ganga Nagar, Rishikesh, Dist.-Dehradun.

.....Opp.parties/Respondents.

**.....**

**Sri Lalit Belwal, learned counsel for the appellant.**
**Sri Pankaj Purohit, learned counsel for the respondent Nos. 1 to 3.**

**Date: 27th Aug., 2004.**

**Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

This appeal has been preferred by the appellant against the order dated 07.2.2003 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli in Motor Accident Claim Case No. 23 of 2000, whereby the appellant has been directed to pay Rs. 4,92,000/- as compensation to the claimant including interest at the rate of 6% per annum.

2- Brief facts giving rise to this appeal are that deceased Bikram Singh was running a vegetable shop at Karnprayag since about last ten years. It was alleged that his monthly expenditure was Rs. 9,200/- on his family. On 12.11.1999 deceased Bikram Singh was going on foot at his shop from his rented house after eating meal. Truck No. UP 07C-7157, which was being driven by its driver rashly and negligently, hit the deceased who was at his left side. The deceased received grievous injuries and died on the spot. The claimants, who are dependents of the deceased, filed the claim petition to the tune of Rs. 10,00,000/- as compensation on account of death of deceased Bikram Singh.

3- The opposite parties contested the claim petition by filing their separate written statement. They denied the allegations made in the claim petition. However, the accident on the aforesaid date, time and place and the insurance of the offending truck has been admitted. The Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence of the parties allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act, 1988 and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have gone through the entire material on record and perused the impugned judgment. The record does not show that application has been moved for permission under Sec. 170 of the aforesaid Act. In this case the owner of the offending vehicle has contested the case before the Tribunal. There is

neither permission of the Tribunal under Section 170 of the Act, nor there is any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for he appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

**(B.S. Verma, J.)** **(P.C. Verma, J.)**

P.Singh